

By: Flynn

H.B. No. 1985

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to debt cancellation agreements offered in connection with  
3 certain loans and retail installment contracts and to amounts  
4 charged for certain agreements offered in connection with certain  
5 loans and retail installment contracts.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Sections 342.4021(a) and (e), Finance Code, are  
8 amended to read as follows:

9 (a) In connection with a loan made under this chapter that  
10 is subject to Section 342.201(d) or 342.301(c), a lender may offer  
11 to the borrower:

12 (1) a debt suspension agreement or debt cancellation  
13 agreement under similar terms and conditions as such an agreement  
14 may be offered by a bank or savings association; or

15 (2) a debt cancellation agreement under Chapter 354.

16 (e) The amount charged for a product authorized by  
17 Subsection (a) or (b) may not exceed five percent of the amount  
18 financed pursuant to the loan made under this chapter [~~must be~~  
19 ~~reasonable~~].

20 SECTION 2. Subchapter H, Chapter 345, Finance Code, is  
21 amended by adding Section 345.358 to read as follows:

22 Sec. 345.358. DEBT CANCELLATION AGREEMENT. A debt  
23 cancellation agreement under Chapter 354 may be offered in  
24 connection with a retail installment contract or retail charge

1 agreement.

2 SECTION 3. Section 348.124(a), Finance Code, is amended to  
3 read as follows:

4 (a) In connection with a retail installment transaction  
5 under this chapter, a retail seller may offer to the retail buyer a  
6 debt cancellation agreement under Chapter 354, including a  
7 guaranteed asset protection waiver or similarly named agreement.  
8 The retail seller may not require that the purchase of a debt  
9 cancellation agreement by the retail buyer be made in order to enter  
10 into a retail installment transaction.

11 SECTION 4. Subchapter G, Chapter 348, Finance Code, is  
12 redesignated as Chapter 354, Finance Code, and amended to read as  
13 follows:

14 CHAPTER 354 [SUBCHAPTER G]. CERTAIN DEBT CANCELLATION AGREEMENTS

15 Sec. 354.001. DEFINITIONS. In this chapter:

16 (1) "Contract" means a retail installment contract  
17 made under Chapter 345 or 348.

18 (2) "Covered item" includes a motor vehicle.

19 (3) "Loan" means:

20 (A) a loan made under Chapter 342; or

21 (B) a loan to which Chapter 342 does not apply  
22 solely because the loan provides for a rate of interest that is 10  
23 percent a year or less.

24 (4) "Motor vehicle" includes a self-propelled or towed  
25 vehicle designed for personal use, including an automobile, truck,  
26 motorcycle, recreational vehicle, all-terrain vehicle, snowmobile,  
27 camper, boat, personal watercraft, and personal watercraft

1 trailer.

2           Sec. 354.002 [~~348.601~~]. LIMITATION ON CERTAIN DEBT  
3 CANCELLATION AGREEMENTS. (a) This chapter [~~subchapter~~] applies  
4 only to a debt cancellation agreement that includes insurance  
5 coverage as part of the borrower's or retail buyer's responsibility  
6 to the lender or holder.

7           (b) The amount charged for a debt cancellation agreement  
8 made in connection with a loan or [~~retail installment~~] contract may  
9 not exceed five percent of the amount financed pursuant to the loan  
10 or [~~retail installment~~] contract. [~~Section 348.124(c) does not~~  
11 ~~apply to a debt cancellation agreement regulated under this~~  
12 ~~subchapter.~~]

13           (c) The debt cancellation agreement becomes a part of or a  
14 separate addendum to the loan or [~~retail installment~~] contract and  
15 remains a term of the loan or [~~retail installment~~] contract on the  
16 assignment, sale, or transfer by the lender or holder.

17           Sec. 354.003 [~~348.602~~]. DEBT CANCELLATION AGREEMENTS  
18 EXCLUSION LANGUAGE. (a) In addition to the provisions required by  
19 Section 354.004 [~~348.603~~], a debt cancellation agreement must fully  
20 disclose all provisions permitting the exclusion of loss or damage  
21 including, if applicable:

22           (1) an act occurring after the original maturity date  
23 or date of the lender's or holder's acceleration of the loan or  
24 [~~retail installment~~] contract;

25           (2) if the covered item is a motor vehicle, any  
26 dishonest, fraudulent, illegal, or intentional act of any  
27 authorized driver that directly results in the total loss of the

1 motor vehicle;

2 (3) if the covered item is a motor vehicle, any act of  
3 gross negligence by an authorized driver that directly results in  
4 the total loss of the motor vehicle;

5 (4) conversion, embezzlement, or concealment by any  
6 person in lawful possession of the covered item [~~motor vehicle~~];

7 (5) lawful confiscation by an authorized public  
8 official;

9 (6) if the covered item is a motor vehicle, the  
10 operation, use, or maintenance of the motor vehicle in any race or  
11 speed contest;

12 (7) war, whether or not declared, invasion,  
13 insurrection, rebellion, revolution, or an act of terrorism;

14 (8) normal wear and tear, freezing, or mechanical or  
15 electrical breakdown or failure;

16 (9) use of the covered item [~~motor vehicle~~] for  
17 primarily commercial purposes;

18 (10) damage that occurs after the covered item [~~motor~~  
19 ~~vehicle~~] has been repossessed;

20 (11) damage to the covered item [~~motor vehicle~~] before  
21 the purchase of the debt cancellation agreement;

22 (12) if the covered item is a motor vehicle, unpaid  
23 insurance premiums and salvage, towing, and storage charges  
24 relating to the motor vehicle;

25 (13) damage related to any personal property attached  
26 to or within the covered item [~~motor vehicle~~];

27 (14) damages associated with falsification of

1 documents by any person not associated with the lender or retail  
2 seller or other person canceling the borrower's or retail buyer's  
3 obligation;

4 (15) any unpaid debt resulting from exclusions in the  
5 borrower's or retail buyer's primary physical damage coverage not  
6 included in the debt cancellation agreement;

7 (16) abandonment of the covered item [~~motor vehicle~~]  
8 by the borrower or retail buyer only if the borrower or retail buyer  
9 voluntarily discards, leaves behind, or otherwise relinquishes  
10 possession of the covered item [~~motor vehicle~~] to the extent that  
11 the relinquishment shows intent to forsake and desert the covered  
12 item [~~motor vehicle~~] so that the covered item [~~motor vehicle~~] may be  
13 appropriated by any other person;

14 (17) any amounts deducted from the primary insurance  
15 carrier's settlement due to prior damages; and

16 (18) any loss occurring outside the United States or  
17 outside the United States and Canada.

18 (b) An exclusion of loss or damage not listed in Subsection  
19 (a) may be included in a debt cancellation agreement only if the  
20 exclusion is disclosed in plain, easy to read language.

21 Sec. 354.004 [~~348.603~~]. REQUIRED DEBT CANCELLATION  
22 AGREEMENT LANGUAGE. A debt cancellation agreement must state:

23 (1) the contact information of the lender or the  
24 retail seller and [~~the~~] holder, and any administrator of the  
25 agreement;

26 (2) the name and address of the borrower or retail  
27 buyer;

1           (3) the cost and term of the debt cancellation  
2 agreement;

3           (4) the procedure the borrower or retail buyer must  
4 follow to obtain benefits under the terms of the debt cancellation  
5 agreement, including a telephone number and address where the  
6 borrower or retail buyer may provide notice under the debt  
7 cancellation agreement;

8           (5) the period during which the borrower or retail  
9 buyer is required to notify the lender or the retail seller or [~~7~~  
10 ~~the~~] holder, or any administrator of the agreement, of any  
11 potential loss under the debt cancellation agreement for total loss  
12 or theft of the covered item [~~motor vehicle~~];

13           (6) if the covered item is a motor vehicle, that in  
14 order to make a claim, the borrower or retail buyer must provide or  
15 complete some or all of the following documents and provide those  
16 documents to the lender or the retail seller or [~~7~~~~the~~] holder, or  
17 any administrator of the agreement:

18                   (A) a debt cancellation request form;

19                   (B) proof of loss and settlement payment from the  
20 borrower's or retail buyer's primary comprehensive, collision, or  
21 uninsured or underinsured motorist policy or other parties'  
22 liability insurance policy for the settlement of the insured total  
23 loss of the motor vehicle;

24                   (C) verification of the borrower's or retail  
25 buyer's primary insurance deductible;

26                   (D) a copy of any police report filed in  
27 connection with the total loss or theft of the motor vehicle; and

1 (E) a copy of the damage estimate;

2 (7) that documentation not described by Subdivision  
3 (6) but ~~or~~ required by the lender or the retail seller or ~~[, the]~~  
4 holder, or any administrator of the agreement, is ~~[not]~~ required to  
5 substantiate the loss or determine the amount of debt to be  
6 canceled;

7 (8) that notwithstanding the collection of the  
8 documents under Subdivision (6), on reasonable advance notice the  
9 lender or the retail seller or ~~[, the]~~ holder, or any administrator  
10 of the agreement, may inspect the borrower's or retail buyer's  
11 covered item ~~[motor vehicle]~~;

12 (9) that the lender or the retail seller or holder will  
13 cancel all or part of the borrower's or retail buyer's obligation as  
14 provided in the debt cancellation agreement on the occurrence of  
15 total loss or theft of the covered item ~~[motor vehicle]~~;

16 (10) the method to be used to calculate refunds;

17 (11) the method for calculating the amount to be  
18 canceled under the debt cancellation agreement on the occurrence of  
19 total loss or theft of a covered item ~~[motor vehicle]~~;

20 (12) that purchase of a debt cancellation agreement is  
21 not required for the borrower or retail buyer to obtain an extension  
22 of credit and will not be a factor in the credit approval process;

23 (13) that in order to cancel the debt cancellation  
24 agreement and receive a refund, the borrower or retail buyer must  
25 provide a written request to cancel to the lender or the retail  
26 seller or ~~[, the]~~ holder, or any administrator of the agreement;

27 (14) that if total loss or theft of the covered item

1 ~~[motor vehicle]~~ has not occurred, the borrower or retail buyer has  
2 30 days from the date of the loan or ~~[retail installment]~~ contract  
3 or the issuance of the debt cancellation agreement, whichever is  
4 later, or a longer period as provided under the debt cancellation  
5 agreement, to cancel the debt cancellation agreement and receive a  
6 full refund;

7 (15) that the borrower or retail buyer may file a  
8 complaint with the commissioner, and include the address, phone  
9 number, and Internet website of the Office of Consumer Credit  
10 Commissioner; and

11 (16) that the lender or holder will cancel certain  
12 amounts under the debt cancellation agreement for total loss or  
13 theft of a covered item ~~[motor vehicle]~~, in the following or  
14 substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I  
15 OWE UNDER THIS LOAN OR CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT  
16 OF THE COVERED ITEM ~~[VEHICLE]~~ AS STATED IN THE DEBT CANCELLATION  
17 AGREEMENT."

18 ~~[Sec. 348.604. APPROVAL OF FORMS FOR DEBT CANCELLATION~~  
19 ~~AGREEMENTS. (a) Debt cancellation agreement forms must be~~  
20 ~~submitted to the commissioner for approval. Debt cancellation~~  
21 ~~agreement forms may include additional language to supplement the~~  
22 ~~terms of the debt cancellation agreement as required by this~~  
23 ~~subchapter.~~

24 ~~[(b) If a debt cancellation agreement form is provided to~~  
25 ~~the commissioner for approval, the commissioner has 45 days to~~  
26 ~~approve the form or deny approval of the form. If after the 45th day~~  
27 ~~the commissioner does not deny the form, the form is considered~~



1 ~~approved.~~

2 ~~[(c) If the debt cancellation agreement form is approved by~~  
3 ~~the commissioner or considered approved as provided by Subsection~~  
4 ~~(b), the terms of the debt cancellation agreement are considered to~~  
5 ~~be in compliance with this subchapter.~~

6 ~~[(d) The commissioner may deny approval of a form only if~~  
7 ~~the form excludes the language required by Sections 348.602 and~~  
8 ~~348.603 or contains any inconsistent or misleading provisions. All~~  
9 ~~form denials may be appealed to the finance commission.~~

10 ~~[(e) If after approval of a form the Office of Consumer~~  
11 ~~Credit Commissioner discovers that approval could have been denied~~  
12 ~~under Subsection (d), the commissioner may order a retail seller,~~  
13 ~~any administrator of the debt cancellation agreement, or a holder~~  
14 ~~to submit a corrected form for approval. Beginning as soon as~~  
15 ~~reasonably practicable after approval of the corrected form, the~~  
16 ~~retail seller, administrator, or holder shall use the corrected~~  
17 ~~form for all sales.~~

18 ~~[(f) A debt cancellation agreement form that has been~~  
19 ~~approved by the commissioner is public information subject to~~  
20 ~~disclosure under Chapter 552, Government Code. Section 552.110,~~  
21 ~~Government Code, does not apply to a form approved under this~~  
22 ~~subchapter.]~~

23 Sec. 354.005 [~~348.605~~]. ADDITIONAL REQUIREMENTS FOR DEBT  
24 CANCELLATION AGREEMENTS. (a) If a borrower or retail buyer  
25 purchases a debt cancellation agreement, the lender or retail  
26 seller must provide to the borrower or retail buyer a true and  
27 correct copy of the agreement not later than the 10th day after the

1 date of the loan or [~~retail installment~~] contract.

2 (b) A lender or holder must comply with the terms of a debt  
3 cancellation agreement not later than the 60th day after the date of  
4 receipt of all necessary information required by the lender,  
5 holder, or administrator of the agreement to process the request.

6 (c) A debt cancellation agreement may not knowingly be  
7 offered by a lender or retail seller if:

8 (1) the loan or [~~retail installment~~] contract is  
9 already protected by gap insurance; or

10 (2) the purchase of the debt cancellation agreement is  
11 required for the borrower or retail buyer to obtain the extension of  
12 credit.

13 (d) This section does not apply to a debt cancellation  
14 agreement offered in connection with the purchase of a commercial  
15 vehicle.

16 (e) The sale of a debt cancellation agreement must be for a  
17 single payment.

18 (f) A lender or holder that offers a debt cancellation  
19 agreement must report the sale of and forward money received on all  
20 such agreements to any designated party as prescribed in any  
21 applicable administrative services agreement, contractual  
22 liability policy, other insurance policy, or other specified  
23 program documents.

24 (g) Money received or held by a lender or holder or any  
25 administrator of a debt cancellation agreement and belonging to an  
26 insurance company, lender or holder, or administrator under the  
27 terms of a written agreement must be held by the lender, holder, or

1 administrator in a fiduciary capacity.

2 (h) A lender or retail seller that negotiates a debt  
3 cancellation agreement and subsequently assigns the loan or  
4 contract shall:

5 (1) maintain documents relating to the agreement that  
6 come into the lender's or retail seller's possession; and

7 (2) on request of the Office of Consumer Credit  
8 Commissioner, cooperate in requesting and obtaining access to  
9 documents relating to the agreement not in the lender's or retail  
10 seller's possession.

11 Sec. 354.006 [~~348.606~~]. REFUND FOR DEBT CANCELLATION  
12 AGREEMENTS. (a) A refund or credit of the debt cancellation  
13 agreement fee must be based on the earliest date of:

14 (1) the prepayment of the loan or [~~retail installment~~]  
15 contract in full before the original maturity date;

16 (2) a demand by the lender or holder for payment in  
17 full of the unpaid balance or acceleration;

18 (3) a request by the borrower or retail buyer for  
19 cancellation of the debt cancellation agreement; or

20 (4) the total denial of a debt cancellation request  
21 based on one of the exclusions listed in Section 354.003 [~~348.602~~],  
22 except in the case of a partial loss of the covered item [~~motor~~  
23 ~~vehicle~~].

24 (b) The refund or credit for the debt cancellation agreement  
25 can be rounded to the nearest whole dollar. A refund or credit is  
26 not required if the amount of the refund or credit calculated is  
27 less than \$5.

1           (c) If total loss or theft has not occurred, the borrower or  
2 retail buyer may cancel the debt cancellation agreement not later  
3 than the 30th day after the date of the loan or [~~retail installment~~]  
4 contract or the issuance of the debt cancellation agreement,  
5 whichever is later, or a later date as provided under the debt  
6 cancellation agreement. On cancellation, the lender or holder, or  
7 any administrator of the agreement, shall refund or credit the  
8 entire debt cancellation agreement fee. A borrower or retail buyer  
9 may not cancel the debt cancellation agreement and subsequently  
10 receive any benefits under the agreement.

11           (d) A lender or holder may in good faith rely on a  
12 computation by any administrator of the agreement of the balance  
13 waived, unless the lender or holder has knowledge that the  
14 computation is not correct. If a computation by the administrator  
15 of the balance waived is not correct, the lender or holder must  
16 within a reasonable time of learning that the computation is  
17 incorrect make the necessary corrections or cause the corrections  
18 to be made to the borrower's or retail buyer's account. This  
19 subsection does not prevent the lender or holder from obtaining  
20 reimbursement from the administrator or another responsible for the  
21 debt cancellation agreement or computation.

22           SECTION 5. Section 348.124(c), Finance Code, is repealed.

23           SECTION 6. This Act takes effect September 1, 2017.